

**SETTLEMENT AGREEMENT BETWEEN STATE BOARD OF  
PHARMACY AND MARY E. HULSEY**

Come now Mary E. Hulsey ("Licensee" or "Respondent") and the Missouri Board of Pharmacy ("Board" or "Petitioner") and enter into this Settlement Agreement for the purpose of resolving the question of whether Licensee's license as a pharmacist will be subject to discipline.

Pursuant to the terms of Section 536.060, RSMo, the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri ("AHC") regarding cause to discipline the Licensee's license, and, additionally, the right to a disciplinary hearing before the Board under Section 621.110, RSMo.

Licensee acknowledges that she understands the various rights and privileges afforded her by law, including the right to a hearing of the charges against her; the right to appear and be represented by legal counsel; the right to have all charges against her proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against her; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against her and, subsequently, the right to a disciplinary hearing before the Board at which time it may present evidence in mitigation of discipline; and the right to recover attorney's fees incurred in defending this action against her license. Being aware of these rights provided her by operation of law, Licensee knowingly and voluntarily waives each and every one of these rights and freely enters into this Settlement Agreement and agrees to abide by the terms of this document, as they pertain to her.

Licensee acknowledges that she has received a copy of the draft complaint, the investigative report, and other documents relied upon by the Board in determining there was cause to discipline her license.

For the purpose of settling this dispute, Licensee stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the Board that Licensee's license, numbered 044312, is subject to disciplinary action by the Board in accordance with the provisions of Chapter 621 and Chapter 338, RSMo.

### **JOINT STIPULATION OF FACTS**

1. The Missouri Board of Pharmacy ("the Board"), is an agency of the State of Missouri created and established by Section 338.110, RSMo, for the purpose of administering and enforcing the provisions of Chapter 338, RSMo.
2. Respondent, Mary E. Hulsey, is licensed by the Missouri Board of Pharmacy as a registered pharmacist, as defined in Section 338.010 RSMo. Respondent's license, numbered 044312, is current and active and was so at all times material herein.
3. At the time of the events alleged herein, Respondent was employed part-time by Dicus Prescription Drugs, 210 E. Murta, Fredericktown, Missouri.
4. On or about February 12, 2007, Mike Kidd, an inspector for the Board, received a call from Jeremy Leach, the pharmacist-in-charge of Dicus Prescription Drugs.
5. Mr. Leach reported that Respondent's employment at Dicus Prescription Drugs had been terminated, and that Respondent was arrested by the Fredericktown Police for theft of controlled substances from Dicus Prescription Drugs on February 8, 2007.
6. Respondent had been in Dicus Prescription Drugs on February 8, 2007.
7. After Respondent left Dicus Prescription Drugs, the Mr. Leach noticed that a #500 count bottle of Hydrocodone was missing from the pharmacy shelf.
8. Mr. Leach alerted Todd Clark, the store manager, to the situation.

9. Mr. Clark approached Respondent and asked to look in her purse.
10. Respondent produced a bottle of #500 Hydrocodone tablets from her purse.
11. Respondent was detained by Mr. Clark and the Fredericktown Police Department was notified.
12. In a voluntary statement to the Fredericktown Police Department dated February 8, 2007, Respondent stated that she took a bottle of generic Vicodin and generic Histussin-HC from Dicus Prescription Drugs without legal prescriptions, and that she had taken a bottle of generic Vicodin from the pharmacy in December, 2006.
13. Respondent stated that she took the drugs for her personal use and that she knew that taking the drugs was wrong.
14. On February 8, 2007, Respondent was arrested by the Fredericktown Police was charged with three (3) felony counts of stealing a controlled substance.
15. On or about June 21, 2007, Debra Ringgenberg, Executive Director of the Missouri Board of Pharmacy, and Thomas Glenski, an inspector for the Missouri Board of Pharmacy, conducted an administrative review meeting with Respondent, Respondent's husband, John D. Auner, and Respondent's attorney, Kevin Roberts, to review investigative information and allegations concerning the acts and conduct of Respondent.
16. During the administrative review meeting, Respondent admitted to the following:
  - A. Opiate dependency, marijuana use within the last year and alcohol abuse;
  - B. Use of approximately 40 Hydrocodone/APAP tablets per day from approximately July, 2005 until February, 2007;
  - C. The diversion of an estimated 20,000 dosage units from Dicus Prescription

Drugs from approximately July, 2005 until February, 2007;

D. The diversion of a lesser quantity of Klonopin (clonazepam) and diazepam from Dicus Prescription Drugs from approximately July, 2005 until February, 2007; and

E. Practicing pharmacy while impaired by drugs.

17. Pursuant to Section 195.017, RSMo, and comparable federal provisions, marijuana is a Schedule I controlled substance.

18. Pursuant to Section 195.017, RSMo, and comparable federal provisions, hydrocodone is a Schedule III controlled substance.

19. Pursuant to Section 195.017, RSMo, and comparable federal provisions, Klonopin (clonazepam) is a Schedule IV controlled substance.

20. Pursuant to Section 195.017, RSMo, and comparable federal provisions, diazepam is a Schedule IV controlled substance.

21. Based upon the findings of this administrative review, the Board, pursuant to Section 338.055.3, RSMo, concluded Respondent engaged in conduct which would be grounds for disciplinary action by the Board.

22. Respondent misappropriated controlled substances from Dicus Prescription Drugs.

23. Respondent's actions alleged herein violate Section 195.060.1, RSMo, which states:

1. Except as provided in subsection 3 of this section, a pharmacist, in good faith, may sell and dispense controlled substances to any person only upon a prescription of a practitioner as authorized by statute . . .

24. Respondent's actions alleged herein violate Section 195.180.1, RSMo, which

states:

1. A person may lawfully possess or have under his control a controlled substance if such person obtained the controlled substance directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of a practitioner's professional practice or except as otherwise authorized by sections 195.005 to 195.425.

25. Respondent's actions alleged herein violate Section 195.202.1, RSMo, which

states:

1. Except as authorized by sections 195.005 to 195.425, it is unlawful for any person to possess or have under his control a controlled substance.

26. Respondent's actions alleged herein violate Section 195.204.1, RSMo, which

states:

1. A person commits the offense of fraudulently attempting to obtain a controlled substance if he obtains or attempts to obtain a controlled substance or procures or attempts to procure the administration of the controlled substance by fraud, deceit, misrepresentation, or subterfuge; or by the forgery or alteration of a prescription or of any written order; or by the concealment of a material fact; or by the use of a false name or the giving of a false address. The crime of fraudulently attempting to obtain a controlled substance shall include, but shall not be limited to nor be limited by, the following:

(1) Knowingly making a false statement in any prescription, order, report, or record, required by sections 195.005 to 195.425;

(2) For the purpose of obtaining a controlled substance, falsely assuming the title of, or representing oneself to be, a manufacturer, wholesaler, pharmacist, physician, dentist, podiatrist, veterinarian, or other authorized person;

(3) Making or uttering any false or forged prescription or false or forged written order;

(4) Affixing any false or forged label to a package or receptacle containing controlled substances;

(5) Possess a false or forged prescription with intent to obtain a controlled substance.

27. Respondent's actions alleged herein violate 21 U.S.C. 353(b)(1) which states:

(1) A drug intended for use by man which--

(A) because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use, is not safe for use except under the supervision of a practitioner licensed by law to administer such drug; or

(B) is limited by an approved application under section 355 of this title to use under the professional supervision of a practitioner licensed by law to administer such drug;

shall be dispensed only (i) upon a written prescription of a practitioner licensed by law to administer such drug, or (ii) upon an oral prescription of such practitioner which is reduced promptly to writing and filed by the pharmacist, or (iii) by refilling any such written or oral prescription if such refilling is authorized by the prescriber either in the original prescription or by oral order which is reduced promptly to writing and filed by the pharmacist. The act of dispensing a drug contrary to the provisions of this paragraph shall be deemed to be an act which results in the drug being misbranded while held for sale.

28. Respondent's actions alleged herein violate 21 U.S.C. 844(a) which states in pertinent part:

It shall be unlawful for any person knowingly or intentionally to possess a controlled substance unless such substance was obtained directly, or pursuant to a valid prescription or order, from a practitioner, while acting in the course of his professional practice, or except as otherwise authorized by this subchapter or subchapter II of this chapter. . .

29. Respondent's conduct alleged herein demonstrates Respondent's use of a controlled substance to an extent that such use impaired Respondent's ability to perform the work of a pharmacist.

30. The diversion of hydrocodone by Respondent exemplifies Respondent's misconduct and dishonesty in the performance of the functions and duties of a pharmacist.

31. Dicus Prescription Drugs and its customers had a relationship of professional trust and confidence in Respondent.

32. Respondent's conduct alleged herein violated the professional trust and confidence of Dicus Prescription Drugs and its customers.

33. Respondent's conduct alleged herein violated the drug laws of Missouri.

34. Respondent's personal use and consumption of controlled substances without a valid prescription as alleged herein violated the drug laws of Missouri.

35. Based upon these findings, the Board, pursuant to Section 338.055, RSMo, concludes Respondent engaged in conduct which would be grounds for disciplinary action by the Board.

### **JOINT CONCLUSIONS OF LAW**

36. Cause exists for Petitioner to take disciplinary action against Respondent's license under Section 338.055, RSMo, which states in relevant parts:

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his certificate of

registration or authority, permit or license for any one or any combination of the following causes:

(1) Use of any controlled substance, as defined in chapter 195, RSMo, or alcoholic beverage to an extent that such use impairs a person's ability to perform the work of any profession licensed or regulated by this chapter.

\* \* \*

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter.

\* \* \*

(13) Violation of any professional trust or confidence.

\* \* \*

(15) Violation of the drug laws or rules and regulations of this state, any other state or the federal government.

\* \* \*

(17) Personal use or consumption of any controlled substance unless it is prescribed, dispensed, or administered by a health care provider who is authorized by law to do so.

### **JOINT AGREED DISCIPLINARY ORDER**

Based upon the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Board in this matter under the authority of Section 621.045.3, RSMo:



1. Respondent's pharmacist license will be placed on PROBATION for five (5) years pursuant to the provisions of Chapters 338 and 620, RSMo. During the period of probation, Respondent will be entitled to practice the profession of pharmacy pursuant to Chapter 338, RSMo provided she adheres to the following terms of probation:

A. Respondent shall keep the Board apprised of her current home and work addresses and telephone numbers. If at any time Respondent is employed by a temporary employment agency or maintains employment that requires frequent daily or weekly changes of work locations, she must provide the Board with all scheduled places of employment in writing prior to any scheduled work time.

B. Respondent shall pay all required fees for licensing to the Board and shall renew her license prior to October 31 for each licensing year.

C. Respondent shall comply with all provisions of Chapter 338, Chapter 195, and all applicable federal and state drug laws, rules and regulations and with all federal and state criminal laws. "State" here includes the State of Missouri and all other states and territories of the United States.

D. Respondent shall make herself available for personal interviews to be conducted by a member of the Board or the Board of Pharmacy staff. Said meetings will be at the Board's discretion and may occur periodically during the disciplinary period. Respondent will be notified and given sufficient time to arrange these meetings.

E. Respondent's failure to comply with any condition of discipline set forth herein constitutes a violation of the disciplinary Agreement.

F. The parties to this Agreement understand that the Board of Pharmacy will

maintain this Agreement as an open record of the Board as provided in Chapters 338, 610 and 620, RSMo.

G. If, after disciplinary sanctions have been imposed, Respondent ceases to keep her Missouri license current or fails to keep the Board advised of her current place of employment and residence, such periods shall not be deemed or taken as any part of the time of discipline so imposed.

H. Respondent shall provide all current and future pharmacy and drug distributor employers and/or pharmacist/manager-in-charges a copy of this disciplinary Agreement within five (5) business days of the effective date of discipline or the beginning date of each employment. If at any time Respondent is employed by a temporary employment agency, she must provide each pharmacy and drug distributor employer and pharmacist/manager-in-charge a copy of this disciplinary Agreement prior to or at the time of any scheduled work assignments.

I. Respondent shall not serve as a preceptor for interns.

J. Respondent shall not serve as a pharmacist-in-charge or in a supervisory capacity without prior approval of the Board.

K. Respondent shall submit to blood tests and/or periodic urinalysis, at Respondent's cost. The timing and/or scheduling for testing is within the Board's sole discretion.

L. During the probationary period, Respondent shall not work in any capacity in any pharmacy where controlled substances are kept in inventory. Respondent may

petition the Board for the rescinding of this restriction after successful completion of three (3) of the five (5) years probation.

M. On the first date of employment within any establishment that maintains an inventory of controlled substances, Respondent shall conduct an Initial Inventory of all scheduled controlled substances. This Initial Inventory requirement will only apply after Respondent has completed three (3) of the five (5) years probation and has petitioned the Board to rescind the restriction referenced in paragraph L. The Initial Inventory shall be immediately available to a member of the Board or the Board of Pharmacy staff. The required inventory must be completed prior to or at the time of any scheduled work assignments.

N. Respondent shall report to the Board, on a preprinted form supplied by the Board office, once every six (6) months, beginning six (6) months after this Agreement becomes effective, stating truthfully whether or not she has complied with all terms and conditions of her disciplinary order.

O. Respondent shall complete an alcohol/drug abuse counseling and treatment program approved by the Board. Said program shall meet the requirements set forth in 20 CSR 2220-2.170 (6).

(1) Documentation required for counselor/program approval must be submitted to the Board office and Respondent's counselor/program must receive Board approval within three (3) months after the effective date of this Agreement. Any unexpected or requested change in treatment counselor/program shall be submitted to the Board within ten (10) days of the change; and the program approval process must again be completed.

(2) Respondent shall, within six (6) weeks of the effective date of this Agreement, undergo an evaluation for chemical dependency performed by a licensed or certified chemical dependency professional. Respondent shall cause

the results of the evaluation to be mailed directly to the Missouri Board of Pharmacy, P.O. Box 625, Jefferson City, Missouri 65102 within ten (10) days after the evaluation has been completed. Each evaluation report shall include the licensee's present state of impairment; a description of the tests performed and the results; discussion of relevant clinical interview findings/interpretations; specification of DSM IV diagnosis/es; appropriate treatment recommendations/plan; the beginning date of treatment; and an assessment for future prospects for recovery. If there is no diagnosis requiring treatment, this should be reported in the evaluation. Respondent shall follow any treatment recommendations made by that chemical dependency professional.

(3) Respondent shall provide a copy of this Agreement to all chemical dependency professionals involved in Respondent's treatment, and all medical professionals issuing/renewing a controlled substance, carisoprodol, nalbuphine or tramadol prescription to Respondent. Said disclosure shall be made before the evaluation required in Paragraph (2), before the issuance of any new prescriptions and, in the case of renewed/refilled prescriptions, disclosure shall be made within ten (10) days of the effective date of this Agreement. Respondent shall simultaneously report to the Board office that said disclosure has taken place.

(4) Respondent shall execute a medical release effective for the entire disciplinary period authorizing any chemical dependency professional or medical professional to release records and/or communicate with the Board, or its representative, regarding Respondent's treatment. Respondent shall not take any action to cancel this release. Respondent shall take all steps necessary to continue the release in effect and shall provide a new release when requested.

(5) Respondent shall cause a report of ongoing treatment evaluation to be submitted from the board-approved chemical dependency professional to the Board office on the schedule prescribed by 20 CSR 2220-2.170(6)(E). The report shall be completed by the treating professional within four weeks prior to the date it is due. The report shall include an evaluation of Respondent's current progress and status related to the treatment recommendations/plan, and Respondent's current prognosis as well as revised treatment recommendations/plan.

(6) Respondent shall submit evidence of weekly (or counselor recommended) attendance at Alcoholics Anonymous, Narcotics Anonymous, or other support group meetings to the Board once every six (6) months throughout the disciplinary period. The documentation shall include the date, time, and place of each meeting and shall bear a signature or abbreviated signature of another person verifying attendance.

(7) If the treatment of Respondent is successfully completed at any time during the disciplinary period, Respondent shall cause the board-approved

chemical dependency professional to submit a report of final evaluation/summary.

(8) Respondent shall abstain completely from the use or consumption of alcohol. The presence of any alcohol whatsoever in a biological fluid sample shall constitute a violation of discipline.

(9) Respondent shall provide the Board office, within 10 days of the effective date of this Agreement, a copy of all controlled substance prescriptions, dispensed or to be dispensed, in Respondent's possession on the effective date of discipline. The following information shall be provided: the prescription number, drug name, strength, dosage instructions, prescriber's name and address, the name and address of the pharmacy where the prescription was dispensed, date dispensed, number of refills available, and any other requested information concerning the prescription.

(10) Respondent shall abstain completely from the personal use or possession of any controlled substance or other drug for which a prescription is required unless use of the drug has been prescribed by a person licensed to prescribe such drug and with whom Respondent has a bona fide relationship as a patient. Upon request, Respondent shall execute a medical release authorizing the medical professional that prescribed the controlled substance or other drug for which a prescription is required to release records and/or communicate with the Board, or its representative, regarding Respondent's treatment. The presence of any controlled substance whatsoever in a biological fluid sample for which Respondent does not hold a valid prescription shall constitute a violation of discipline. Respondent shall provide the Board with a copy of each prescription received, controlled or non-controlled, within five (5) days of Respondent's receipt of the prescription.

(11) Respondent shall inform any professional preparing a prescription for Respondent that Respondent is chemically dependent.

P. If applicable, Respondent shall notify any employer of the employer's need to apply for and receive the necessary state (misdemeanor/felony) and federal (felony) waivers from the Bureau of Narcotics and Dangerous Drugs and the Drug Enforcement Administration in order to be employed within a facility that maintains state and federal registrations for the purpose of storing, distributing or dispensing controlled substances.

Q. When the Well-being Committee created in 2007 by Senate Bill 195 in Section 338.380 is established, fully functional, and fully operational, Respondent is required to become a participant in the Committee's program for the remainder of the disciplinary period. The Board will notify Respondent when this occurs and Respondent will bear all the costs of the program.

2. Upon the expiration of said discipline, Respondent's license as a pharmacist in Missouri shall be fully restored if all other requirements of law have been satisfied; provided, however, that in the event the Board determines that Respondent has violated any term or condition of this Agreement, the Board may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may suspend, revoke or otherwise lawfully discipline Respondent.

3. If the Board determines that Respondent has violated a term or condition of this Settlement Agreement, which violation would also be actionable in a proceeding before the Administrative Hearing Commission or the circuit court, the Board may elect to pursue any lawful remedies or procedures afforded it and is not bound by this Settlement Agreement in its determination of appropriate legal actions concerning that violation.


4. No order shall be entered by the Board pursuant to the preceding paragraph of this agreement without notice and an opportunity for a hearing before the Board in accordance with the provisions of Chapter 538, RSMo.

5. The terms of this Settlement Agreement are contractual, legally enforceable, binding and not merely recitals. Except as otherwise contained herein, neither this Settlement Agreement nor any of its provisions may be changed, waived, discharged, or terminated, except

by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

6. Respondent, together with her heirs and assigns, and her attorneys, do hereby waive and release, acquit and forever discharge the Board, its respective members and any of its employees, agents, or attorneys, including any former board members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses, and compensation, including, but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to Section 536.087, RSMo, or any claim arising under 42 U.S.C. Section 1983, which may be based upon, arise out of, or relate to any of the matters raised in this litigation, or from the negotiation or execution of this Settlement Agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this Settlement Agreement in that it survives in perpetuity even in the event that any court of law deems this Settlement Agreement or any portion thereof void or unenforceable.

**RESPONDENT, AS EVIDENCED BY THE INITIALS ON THE APPROPRIATE LINE,**

_____	<b>REQUESTS</b>
	<b>DOES NOT REQUEST</b>

**THE ADMINISTRATIVE HEARING COMMISSION TO DETERMINE IF THE FACTS SET FORTH HEREIN ARE GROUNDS FOR DISCIPLINING RESPONDENT'S LICENSE.**

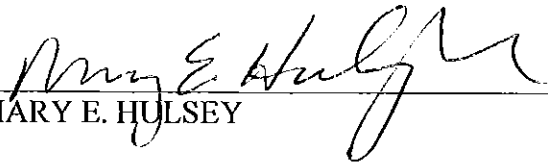
If Respondent has requested review, Respondent and Board jointly request that the Administrative Hearing Commission determine whether the facts set forth herein are grounds for

disciplining Respondent's license and issue findings of fact and conclusions of law stating that the facts agreed to by the parties are grounds for disciplining Respondent's license. Effective fifteen (15) days from the date the Administrative Hearing Commission determines that the Settlement Agreement sets forth cause for disciplining Respondent's license, the agreed upon discipline set forth herein shall go into effect.

If Respondent has not requested review by the Administrative Hearing Commission, the Settlement agreement goes into effect fifteen (15) days after the document is signed by a representative of the Board.

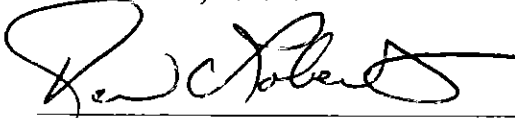


RESPONDENT

  
MARY E. HULSEY

Date: 3/21/08

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& ZIMMER, L.L.C.

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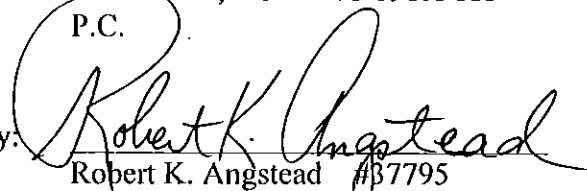
PETITIONER

MISSOURI BOARD OF  
PHARMACY

By:   
DEBRA C. RINGGENBERG  
Executive Director

Date: 4-16-08

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